# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 7937 of 1989

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE K.A.PUJ**

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? |
| 2 | To be referred to the Reporter or not ? |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? |
| 5 | Whether it is to be circulated to the civil judge ? |

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**SOLANKI J SHAMJIBHAI & 6 - Petitioners**
**Versus**
**STATE OF GUJARAT & 2 - Respondents**

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**Appearance :**
MRS SANGEETA PAHWA for Petitioners.
MR LB DABHI, AGP for Respondent No. 1.
MR KH BAXI for Respondent Nos. 2-3.

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**CORAM : HONOURABLE MR.JUSTICE K.A.PUJ**

**Date : 12/01/2006**

**ORAL JUDGMENT**

1.The petitioners, in all 7, have filed this petition under Article 226 of the Constitution of India praying for quashing and setting aside the action of the respondents of deciding not to operate the selection list prepared in the year 1985 for the posts of Talati-cum-Mantri pursuant to the advertisement at Annexure A to this petition and further action of the respondents in not appointing the petitioners as per selection list, on the 44 vacant posts of Talati-cum-Mantri as being bad in law, illegal, arbitrary, unconstitutional, suffers from vice of favoritism and nepotism, not in consonance with the principles laid by this Court and by the Hon'ble Apex Court. The petitioners have further prayed for quashing and setting aside the decision taken by the respondents as per the Circular dated 05.09.1989 to cancel the selection list

prepared for the posts of Talati-cum-Mantri. The petitioners have further prayed for the direction to the respondents to stick to the Circular dated 29.05.1982 and to forthwith operate the selection list prepared for the posts of Talati-cum-Mantri, pursuant to the advertisement. The petitioners have prayed for the interim relief against the respondents restraining them from making any further appointments and/or to direct the respondents to keep 7 posts of Talati-cum-Mantri vacant during the pendency of this petition.

2.The petition was admitted on 22.02.1990 and it was ordered to be heard with Special Civil Application No. 7089 of 1989 and 6634 of 1989.

3.Special Civil Application No. 7089 of 1989 was disposed of by this Court on 30.11.1989 whereby the Court has dismissed the said petition on the ground that the selection procedure was

sent for approval to the District Education Officer and the District Education Officer pointed out that other eligible candidates were not called for interview and, therefore, the procedure followed by the authorities was not a reasonable one.

4.Special Civil Application No. 6634 of 1989 was disposed of by this Court on 13.09.1996 by the Division Bench of this Court and while dismissing the said petition, this Court has held that a select list duly prepared must be co-terminous with the number of vacancies which are to be filled in and such a list must get exhausted and come to an end. The Court further held that in absence of statutory Rules, once such vacancies are filled in, the select list should get exhausted and the list cannot be and should not be held operative for vacancies that may arise in future, otherwise it would obstruct the right of other

candidates. The Court, therefore, held that the wait list prepared is not according to policy or guidelines issued earlier. The Court, therefore, took the view that the wait list in question being not co-terminous with the number of vacancies to be filled in, very lengthy and disproportionate, and prepared before twelve years, cannot be now pressed into service by the petitioners for seeking employment under an old and outdated list. The Court further directed the respondents that they must prepare the list for the post to be filled in, in accordance with the rules published forthwith and no appointments shall be made from the aforesaid list.

5.Based on the aforesaid two judgments, this Court has passed an order on 11.08.2004 by holding that in view of the fact that the matter was ordered to be heard with Special Civil Applications No. 6634 of 1989 and 7989 of

1989 and the Division Bench of this Court by judgment and order dated 13.09.1996 has dismissed the aforesaid Special Civil Application, this petition is also required to be rejected on the same set of reasonings which have been given by the Division Bench.

6.Subsequent to the aforesaid order, an application was moved pointing out that the judgments are clearly distinguishable and accordingly, the said order dated 11.08.2004 was recalled and the petition was restored to file for fresh hearing and it is now taken up for hearing.

7.Mrs. Sangeeta N. Pahwa, learned advocate appearing for the petitioner has submitted that the petitioner Nos. 1 to 4 belong to schedule caste and petitioner Nos. 5 & 7 belong to Baxi panch and the petitioner No. 6 belong to General category. All the petitioners are now

age barred and are not eligible for government employment. She has further submitted that the respondents have issued an advertisement in various newspapers in the year 1983 bearing Advertisement No. 31 to 35-83-84 for the posts of Talati-cum-Mantri under the District Panchayats of Baroda, Valsad, Jamnagar and Rajkot on various terms and conditions. She has further submitted that out of 100 posts, 50 posts are meant for general category, 07 posts are reserved for Schedule Caste, 33 posts for Schedule Tribes and 10 for Baxi Panch. The petitioners have applied for the said posts and after scrutinizing their applications, they were called for written test. Since the petitioners have cleared their written tests, they were called for personal interviews and accordingly, selection list of 177 candidates was prepared in the year 1985. During the period from 1985 to July 1989, in all 78 persons were appointed from the said selection

list of Talati-cum-Mantri. She has further submitted that the petitioners have made several representations to the respondent authorities to give appointment to the petitioners as the posts were still vacant. She has further submitted that as per Circular dated 05.09.1989, the respondent authorities have decided that the selection list prepared for the posts of Talati-cum-Mantri should be cancelled and fresh selection list be prepared for the said posts, by issuing fresh advertisement.

8. She has further submitted that the respondent authorities are not justified in cancelling the selection list in view of the Circular dated 05.09.1989. The action of the respondents in not filling the vacant posts of Talati-cum-Mantri from the selection list would amount to denial of constitutional guarantees enshrined upon the petitioners in as much as it is the

duty of the State to provide employment to the citizens. She has further submitted that the action of the respondents to prepare a fresh selection list without exhausting the selection list already prepared and which is in operation is also not in consonance with the principles laid down by this Court in the case of Choudhary Govabhai N. reported in 1988 (1) G.L.H. (UJ) 14. No opportunity was given to the petitioners before deciding to cancel the said selection list. On the date of the advertisement, on the date of the written test, on the date of oral test and even on the date of preparation of selection list, Circular dated 29.05.1982 was very much in existence and hence, in view of the well settled principles under service jurisprudence, the selection list so prepared shall remain in operation and as and when the vacancies arise, the candidates from the said selection list should be appointed and, therefore, the selection list in

question prepared in the year 1985 should be directed to be kept in operation till a fresh selection list was prepared in accordance with law.

9.In support of her submission, she has submitted that even if recruitment rules are amended, selection list does not cease to operate. Even in the present case, neither the recruitment rules are changed nor the qualifications are changed and hence, as per the said selection list, fresh recruitments should be made to the vacant posts by the respondent authorities. In support of this proposition, she relied on the decision of this Court in the case of *Gujarat State Civil Supplies Corporation Limited V/s. Dashrathlal L. Patel, 1993 (2) G.L.R. 1676* wherein this Court has held that it cannot be disputed that the amended rules are only prospective in nature and that there is nothing in the rule either expressly or by necessary

implication that they have a retrospective effect. In view of the fact situation, as has been laid down by the Supreme Court in case of *P. Mahendran* (*AIR 1990 SC 405*), the opinion that the selection of the petitioner made by the respondent-Corporation on the basis of existing rules could not have been abandoned and set at naught on the basis of the amended rules which are never retrospective in operation. The Court has further held that neither the subsequent rules, only prospective and never retrospective in operation, nor the agreement or settlement arrived at between the Union and the respondent-Corporation to which the petitioner was never a party, which provided for the relaxation of the experience, qualification vis-a-vis the new Rules also, could validly be taken as a ground, just and proper to obliterate the whole selection process which has resulted in the drawing up and the publication of the Select List. The

action of the respondent-Corporation also could not be saved and sustained saying the same being not arbitrary or unreasonable can never be challenged by a selectee.

10.She has further submitted that the selection list was prepared in the year 1985 and it was in operation till 1989 and hence, it cannot be cancelled by way of resolution as resolution has no binding effect. Even otherwise, the said resolution did not provide for scraping of the selection list prepared earlier and there is no mention about scraping of such selection list. There was no illegality pointed out by the authorities in the earlier selection list which was prepared and in absence of any such illegality, the said selection list should not have been cancelled. In support of this submission, she relied on the decision of the Hon'ble Supreme Court in the case of *Munna Roy V/s. Union of India and others, (2000) 9 S.C.C.*

*283* wherein while reiterating the proposition that mere inclusion of a person's name in the list does not confer any right and, therefore, mandamus cannot be issued. The Court has, however, observed that if the administrative authority takes a decision and the reasons for such decision are erroneous then such a decision can be interfered with by a Court of law. The Court in the facts of case in hand has held that the appellant pursuant to an advertisement had applied for and she had the requisite qualification. She became successful in the written test as well as in the viva voce. The list of successful candidates included her name but the ground for cancellation of the entire list without even informing the appellant was that though the minimum qualification required was a matriculate, she was a graduate and thus dubious method has been adopted for being selected. The Court, therefore, held that if a

candidate possesses a qualification higher than the required qualification and the advertisement itself had prescribed the same then how can the authority come to a conclusion that selection has been made by adopting a dubious method. The Court, therefore, came to the conclusion that the reasons which weighed with the authorities to quash the selection were not germane and must be held to be arbitrary and irrational. The Court, therefore, set aside the impugned order of the High Court as well as the order of the authority concerned quashing the selection panel and directed that the order of the Tribunal be implemented.

11.Mrs. Pahwa has further relied on the decision of this Court rendered in *Special Civil Application No. 8412 of 1988 decided on 31.08.1989* wherein the Court has discussed various authorities and came to the conclusion that there was as such no other reason for not

appointing the petitioners as armed police constable. Not only the right of appointment but even the right of being considered for appointment was denied to the petitioners during the period of operation of list by arbitrary orders of respondent Nos. 1 & 2. Merely because subsequently, during the pendency of the proceedings period of one year was over, that by itself, should not be a ground for denying the appointment to the petitioners as armed police constables. The Court, therefore, issued directions in that matter to the respondent authorities not to reject the claim of the petitioners for being appointed as armed police constables only on the ground that the period of one year has expired and, therefore, the select list has ceased as the respondent No. 1 did not consider the appointment of the petitioners even during the period of one year, when the vacancies were available for the appointment as armed police

constables. The Court, therefore, directed the respondent No. 1 to consider the petitioners for appointment as armed police constables within one month from the receipt of writ of this Court. The Court has allowed the petition to the aforesaid extent.

12.Based on the aforesaid decisions as well as peculiar facts of the case, Mrs. Sangeeta Pahwa, learned advocate appearing for the petitioners has strongly urged before the Court that since the selection list was wrongly cancelled and the petitioners were denied their original appointments, the respondents may be directed to consider their case for appointment to the posts of Talati-cum-Mantri and the petition be allowed accordingly.

13.The present petition was opposed by Mr. L.B. Dabhi, learned Assistant Government Pleader appearing for the respondent No. 1 and Mr. K.H.

Baxi, learned advocate appearing for the respondent No. 2 – District Panchayat. They have submitted that at the time of admission of this petition, the petition was ordered to be heard along with Special Civil Applications No. 7089/1989 and 6634/1989. Both these petitions were decided against the petitioners wherein more or less similar issue was involved and the Court has taken the view that simply because one's name is there in the selection list, he cannot get any exclusive right of appointment. Mr. Dabhi has further submitted that the selection list was prepared in the year 1985 and till 1990, almost 80 appointments were made. Thereafter, by virtue of the Govt. ban in making fresh recruitment, no further appointment was made and thereafter the Resolution dated 12.06.1989 was passed whereby the earlier selection list was cancelled. He has further submitted that cogent reasons were given while cancelling the selection list and

hence, on the basis of the said selection list, the petitioners cannot make any claim.

14.An affidavit-in-reply is filed on behalf of the respondent No. 3. It is stated in the said reply that in view of Govt. Resolution dated 05.07.1989, the petitioners are not entitled to any of the reliefs. It is further stated that an advertisement bearing No. 31 to 35 of 1983 and 1984 was issued in which last date for receipt of the application was 01.11.1983 and the posts were to be filled as per the specifications stated in the advertisement and in pursuance of the said advertisement, the applications were made, scrutinized and after undergoing the process of written test as well as interview, the select list was prepared and 80 appointments were made from the said select list according to the requirements of Panchayat. The entire process pertaining to examination was being done by the respondent

No. 2 and, therefore, the respondent No. 3 has no control over the same and the relevant Rules are being framed by respondent No. 1 and in accordance with the said rules, the appointments were being made and as the respondent No. 1 had banned further appointments on account of scarcity and the said ban was continued till 30.06.1989, the remaining candidates of the list could not be given appointment. In view of Resolution dated 12.06.1989, the Resolutions dated 29.05.1982 and 05.04.1989 were cancelled and, therefore, the earlier selection list was also cancelled. It is further stated that necessary clarification was made by letter dated 05.09.1989 whereby both select/waiting lists were cancelled. It is, therefore, stated that the action of the respondents was absolutely just, legal and valid and suffers from no vice as alleged in the petition.

15.Mr. Dabhi has relied on the decision of the Hon'ble Supreme Court in the case of *State of Orissa and Others V/s. Bhikari Charan Khuntia and Others, (2003) 10 S.C.C. 144* wherein the Court has examined the propriety of the judicial directions for filling up posts and held that Court cannot interfere with the policy decision of Government for Recruitment, unless it is arbitrary.

16.Mr. Dabhi has further relied on the decision of the Hon'ble Supreme Court in the case of *Vinodan T. & Others V/s. University of Calicut and Others, (2002) 4 S.C.C. 726* wherein the Court has taken the view that the persons selected for a post do not acquire a right to be appointed to such post. The Court has also held that even if vacancies exist, it is open to the authority concerned to decide how many appointments should be made. The Court has observed that the principle that persons merely

selected for a post do not thereby acquire a right to be appointed to such post is well established by judicial precedent. Even if vacancies exist, it is open to the authority concerned to decide how many appointments should be made.

17.Lastly, Mr. Dabhi has relied on the decision of the Hon'ble Supreme Court in the case of *S. Renuka and Others V/s. State of A.P. And another, (2002) 5 S.C.C. 195* wherein the Court has taken the view that selected candidates have no right to be appointed.

18.In view of the aforesaid judgments as well as the Resolutions passed by the respondent authorities and in light of the fact that further recruitment was banned by way of economic measures by the Govt., the action taken by the respondent authorities in cancelling earlier selection list was quite

justified and it cannot be said to be an arbitrary or based on malafide exercise of powers. It is, therefore, submitted that the petition may be dismissed with cost.

19.After having heard learned advocates appearing for the respective parties and after having gone through the pleadings as they contained in the memo of petition as well as in the affidavit-in-reply and after having considered the necessary documents, resolutions and orders and the authorities cited before the Court, the Court is of the view that simply because the petitioners' name was there on the selection list, they have not got any vested right of appointment. The position is well settled in law. In all the three decisions of the Hon'ble Suprme Court referred to above, it was held that the persons will not acquire any right simply because their names are there on the selection list. It is true that if the select

list is arbitrarily cancelled by the authorities, then it is always open for the judicial review. However in the present case, it appears to the Court that the selection list was prepared in 1985. It has remained in operation till 1989. As against vacancies of 100, 80 posts were already filled in. The selection list was prepared for 177 candidates. The present petitioners' name appeared in the selection list within the first hundred candidates. But at the same time, after the appointment of 80 candidates, there was a Govt. ban and it has been submitted before the Court that initially, the Govt. has decided to implement the ban to the extent of 50% and hence, as against 29, 15 appointments were made. There is no averment to the effect that the Govt. has made any subsequent appointment from amongst the said selection list. It is also the case of the petitioners that no further appointments have been made. It is only

because of the ban that has been imposed, the appointments were not made. In such a situation, the Court cannot direct the Govt. to make appointment irrespective of the fact that there was a ban and subequently, the earlier selection list was cancelled by virtue of the Resolution of 12.06.1989 as by that time, already four years have passed and the Courts have consistently taken the view that the selection list will also be prepared looking to the requirements.

20.A specific query has been raised by the Court as to whether till this any appointment to the post of Talati-cum-Mantri is made, it has been stated by Mr. Dabhi that as such, there no further appointment was made. But thereafter, certain recruitments of Talati-cum-Mantri were made by way of Gram Sahayak at the fixed salary of Rs. 2,500/- per month. Keeping this fact in mind, the Court considers the prayer

made by Mrs. Sangeeta Pahwa that necessary directions be issued and their cases be considered. Accordingly, while considering the case of the petitioners, the issue relating to relaxation may also be considered and if the petitioners are agreeable to such appointments as Gram Sahayak on the basis of fixed salary of Rs. 2,500/- per month, as stated before the Court, the petitioners' case may also be considered sympathetically and if they fulfill the requisite criterias for making such an appointment, necessary steps may be taken. The petitioners, therefore, if they so desire, may make a representation to the above effect within one month from today.

21.The above indulgence is shown by the Court only on sympathetic ground. Otherwise, after a period of 16 years, the Court is reluctant to issue any direction on the basis of the selection list which was prepared in the year

1985 and cancelled in 1989. The respondents are directed to consider the case of the petitioners within a period of three months from the date of receipt of representation from the petitioners.

22.Subject to the aforesaid observations and directions, this petition is accordingly disposed of. Rule discharged without any order as to costs.

**[K.A. PUJ, J.]**

**S***avariya*